BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Tommy Ray & Sherry Lee Nelson	)
	Dist. 1, Map 57, Control Map 57, Parcel 90.00	) Roane County
	Residential Property	)
	Tax Year 2005	)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$340,000	$ -0-	$340,000	$85,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on July 16, 2006 in Knoxville, Tennessee. In attendance at the hearing were Tommy Nelson, the appellant, and Roane County Property Assessor's representative Melvin Moore.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 8.5 acre tract with 610' of lake frontage located at 110 Nelson Place in Harriman, Tennessee.

The taxpayer contended that subject property should be valued at $188,000. In support of this position, the taxpayer argued that the 2005 countywide reappraisal caused the appraisal of subject property to increase excessively on a percentage basis. In addition, the taxpayer asserted that the current appraisal of subject property does not achieve equalization given the assessor's appraisals of two nearby parcels. Finally, the taxpayer maintained that subject property experiences a dimunition in value due to its topography, a lack of utilities, the proximity of mobile homes and limited access.

The assessor contended that subject property should be valued at $340,000. In support of this position, Mr. Moore introduced into evidence comparable sales he maintained support the methodology used to value subject property. In particular, Mr. Moore testified subject property was valued assuming three building sites worth $100,000 per acre and the remaining 5.5 acres at $7,273 per acre.

I. Jurisdiction

The jurisdiction of the State Board of Equalization is governed in relevant part by Tenn. Code Ann. § 67-5-1412(e) which provides in pertinent part as follows:

> (e) Appeals to the state board of equalization from action of a local board of equalization must be filed before August 1 of the tax year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. . .

> The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

The administrative judge finds that the decision of the Roane County Board of Equalization was postmarked July 25, 2005. The administrative judge finds that the taxpayer's appeal to the State Board of Equalization was postmarked September 20, 2005 which is beyond the forty-five (45) day deadline. Thus, the threshold issue before the administrative judge concerns whether reasonable cause exists for the untimely filing.

The administrative judge finds that the taxpayer addressed this issue in an attachment to his appeal form which provided as follows:

> The letter I received from the Roane County Assessor of Property regarding the determination of the County Board of Equalization is dated July 5, 2005. The envelope containing this correspondence was postmarked July 25, 2005 as evidenced by the included photocopy. This notice was delivered to my residence sometime the week of July 25 while I was on vacation. I returned from vacation on August 7, 2005 and learned of the notice at that time. I am submitting this request within 45 days of the date I received notice.

The administrative judge finds that Mr. Nelson also testified at the outset of the hearing to the same set of facts when asked to address the jurisdictional issue.

The administrative judge finds Mr. Nelson conceded he might have been mistaken after the administrative judge provided him with a copy of the record maintained by the State Board of Equalization concerning his request. According to the record in his file, Mr. Nelson requested appeal forms for six (6) parcels by telephone on July 28, 2005 and the forms were mailed to him the following day.

The administrative judge finds Mr. Nelson subsequently testified that the delay in filing the appeal form resulted from his heavy workload and the need to research information pertaining to the six (6) parcels.[1]

The administrative judge finds that the "reasonable cause" provision has been considered on numerous occasions by the Assessment Appeals Commission. Typical of these cases is the *Appeal of Transit Plastic Extrusions, Inc.* (Lewis County, Tax Years 1990 & 1991), where, in affirming an order of dismissal, the Commission expounded as follows:

> The administrative judge found that the "reasonable cause" statute was intended to relieve a taxpayer from forfeiting appeal rights due to circumstances beyond the taxpayer's control, such as illness, rather than from mere inadvertence, lack of knowledge, or neglect. We agree with this conclusion. **A taxpayer...cannot prevent the imposition of reasonable**

[1] Mr. Nelson ultimately filed only this one appeal.

> **deadlines for appeal by pleading the press of other business** or lack of awareness of the manner or necessity of appeal [Emphasis added.]

Id. at p. 2.

Respectfully, after reviewing all the evidence of record, the administrative judge finds that the taxpayer failed to establish reasonable cause for his untimely appeal to the State Board of Equalization. Accordingly, the administrative judge finds this appeal must be dismissed for lack of jurisdiction.

II. Value

The administrative judge finds that it is technically unnecessary to address the issue of value since the State Board of Equalization lacks jurisdiction. Nonetheless, the administrative judge finds it appropriate to explain why a reduction in value would not have been granted even if the State Board of Equalization had jurisdiction.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

The administrative judge finds that the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

> The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .
>
> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2. The administrative judge finds that the taxpayer did not introduce any comparable sales in support of his contention of value.

The administrative judge finds merely reciting factors that could cause a dimunition in value does not establish the current appraisal exceeds market value. The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities. . .was too high. In support of that position, she claimed that. . .the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the State Board of Equalization has historically adhered to a *market value* standard in the review of property assessments. See *Appeals of Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982, Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to "equalization" of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy.[2] But the Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. In the *Appeal of Stella L. Swope*

[2] The 2005 appraisal ratio for Roane County as adopted by the State Board of Equalization is 100%.

(Davidson County, Tax Years 1993 and 1994, Final Decision and Order, December 7, 1995), the Commission reasoned as follows:

> The assessor's recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Id. at p. 2.

The administrative judge finds that even if he could consider an equalization argument, Mr. Nelson has compared "apples to oranges" rather than "apples to apples." The administrative judge finds one "comparable" has 16.7 acres, whereas subject tract contains only 8.5 acres. The administrative judge finds that the other "comparable" has 194' of lake frontage whereas the subject has 610' of lake frontage.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of July, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Tommy Ray & Sherry Lee Nelson
Teresa Kirkham, Assessor of Property